



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/170324

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Marinette County Department of Human Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on January 5, 2016.

The issue for determination is whether, under the spousal impoverishment rules of the MA program, petitioner’s *Community Spouse Resource Allowance* [“CSRA”] may be increased.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at January 5,
[REDACTED]
[REDACTED])

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED], ESS
Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 83 years old) is a resident of Marinette County, Wisconsin.
2. Petitioner is married and resides in a nursing home; his wife lives in the community. Exhibit B1.
3. The total combined countable assets of petitioner and her husband as of August 31, 2015 were \$121,509.43. Exhibit C.
4. The total monthly income of petitioner and his wife, excluding income generated by the total combined countable assets of petitioner and his wife, is \$2,268.00 per month consisting of \$1,699.00 per month of Social Security for petitioner and \$569.00 per month of Social Security for petitioner's wife. Exhibit C.
5. The Minimum Monthly Maintenance Needs Allowance ["MMMNA"] for petitioner's wife, without a Fair Hearing or Court Order, is at least \$2,655.00. Exhibit C.

DISCUSSION

Under the normal MA eligibility rules, a person is not eligible for MA unless they are first in poverty. See, Wis. Stat. §§ 49.46 & 49.47 (2013-14). If these rules applied to situations, such as petitioner's, where one spouse is in a nursing home and the other in the community, the community spouse would be forced into poverty before the spouse in the nursing home would be eligible for MA. This is because married couples have a legal obligation to financially support one another. See, Wis. Stat. § 49.90(1)(a)1. (2013-14).

To avoid forcing community spouses into poverty, persons, such as petitioner, who are residents of a nursing home and still have a spouse living in the community may apply for MA under special rules known as *Spousal Impoverishment* rules. These rules are designed to allow the community spouse to keep a certain portion of the married couple's assets and income. See, Wis. Stat. § 49.455 (2013-14); Wis. Admin. Code DHS § 103.075 (July 2015); *Medicaid Eligibility Handbook* ["MEH"] Chapter 18.

The amount of assets a community spouse is allowed to keep is called the *Community Spouse Resource Allowance* ["CSRA"] (also sometimes called the *Community Spouse Asset Share* ["CSAS"]). The CSRA can be invested by the community spouse to generate income, which the community spouse can then use for living expenses. If the amount of income generated by the CSRA, combined with any other income the community spouse receives, does not rise to the level of a certain minimum monthly amount (known as the MMMNA), an increase in the CSRA may be requested by way of the Fair Hearing process. The purpose of increasing the CSRA is to give the community spouse a greater amount of assets to invest, thereby generating a greater amount of income, which can then be used by the community spouse for living expenses. In this case, petitioner has requested that the CSRA be increased by the Fair Hearing process. See, Wis. Stat. §§ 49.455(6)(b)(3) & (8)(d) (2013-14); Wis. Admin. Code §§ DHS 103.075(8)(a)5. & (8)(d) (July 2015); MEH 18.4.4.2.

The CSRA can be increased if it is established at a Fair Hearing that the CSRA determined without a Fair Hearing does not generate enough income to raise the community spouse's income to the *Minimum Monthly Maintenance Needs Allowance* ["MMMNA"]. In such a case a CSRA will be established by the Fair Hearing process that generates enough income to raise the community spouse's income to the MMMNA. Wis. Stat. § 49.455(8)(d) (2013-14); Wis. Admin. Code § DHS 103.075(8)(d) (July 2015).

The amount of assets by which the CSRA is increased must be based on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raises the community spouse's income to the MMMNA (the community spouse is not required to actually purchase the annuity). Wis. Stat. § 49.455(8)(d)2. (2013-14); See also, *BEPS/DFS Operations Memo* No: 13-38; Date: November 7, 2013 (page 4).

In this case, the MMMNA is at least \$2,655.00. MEH 18.6.2.1. Petitioner argues that his wife's current monthly income is \$2,223 and, thus, is "\$432 below the MMMNA." Petitioner argues the CSRA must be increased by \$51,120.59 because that is the cost of a single premium lifetime annuity that pays \$432 per month. However, the \$2,223 cited by petitioner takes into account only the monthly Social Security income received by he and his wife (\$1,699 for petitioner plus \$569 for his wife less the \$45 monthly; personal needs allowance) -- it does not take into account the income generated by the assets that are owned by petitioner and his wife (even if \$51,120.59 were used to purchase a single premium lifetime this would still leave \$70,388.84 in other assets that are owned by petitioner and his wife).

As noted above, the law requires that "other available income" be taken into account when figuring the amount by which the CSRA may be increased. This includes asset generated income. The record in this case does not reveal exactly how much monthly income is generated by the assets that are owned by petitioner and his wife.¹ See, Exhibit #3. For this reason no increase in the CSRA may be granted at this time.

CONCLUSIONS OF LAW

For the reasons discussed above, under the spousal impoverishment rules of the MA program petitioner's CSRA may not be increased at this time.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

¹ It appears that at least some income is generated. For instance, one of the *Thrivent Financial* IRA's has an interest rate of "4.00" and the *Stephenson National Bank* accounts appear to pay interest. Additionally, it is noted that the *Fidelity Investment* statement is not completely legible. See, Exhibit #3.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

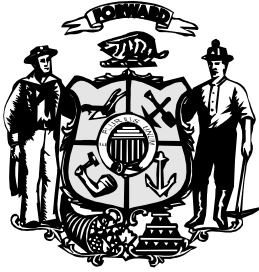
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of January, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 27, 2016.

Marinette County Department of Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED]